

days and review any comments submitted thereto. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision.

(c) FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and the comments submitted regarding the petition.

(d) If FTA fails to post a response to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted until and unless FTA states otherwise.

#### § 601.47 Review Procedures.

(a) FTA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if it plans to reconsider a decision.

(b) FTA decision letters, either granting or denying a petition, shall be posted in the appropriate Emergency Relief Docket and shall reference the document number of the petition to which it relates.

## PART 602—EMERGENCY RELIEF

Sec.

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AUTHORITY: 49 U.S.C. 5324 and 5334; 49 CFR 1.91.

SOURCE: 79 FR 60361, Oct. 7, 2014, unless otherwise noted.

#### § 602.1 Purpose.

This part establishes the procedures and eligibility requirements for the administration of emergency relief funds for emergency public transportation services, and the protection, replacement, repair or reconstruction of public transportation equipment and facilities which are found to have suffered or are in danger of suffering serious damage resulting from a natural disaster affecting a wide area or a catastrophic failure from an external cause.

#### § 602.3 Applicability.

This part applies to entities that provide public transportation services and that are impacted by emergencies and major disasters.

#### § 602.5 Definitions.

The following definitions apply to this part:

*Affected recipient.* A recipient or subrecipient that operates public transportation service in an area impacted by an emergency or major disaster.

*Applicant.* An entity that operates or allocates funds to an entity to operate public transportation service and that applies for a grant under 49 U.S.C. 5324.

*Building.* For insurance purposes, a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site. This includes manufactured or modular office trailers that are built on a permanent chassis, transported to a site in one or more sections, and affixed to a permanent foundation.

*Catastrophic failure.* The sudden failure of a major element or segment of the public transportation system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration, lack of proper maintenance or a design flaw.

*Contents coverage.* For insurance purposes, contents are personal property within a building, including fixtures, machinery, equipment and supplies. In addition to the costs to repair or replace, contents insurance coverage shall include the cost of debris removal and the reasonable cost of removal of contents to minimize damage.

*Emergency.* A natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe

storm or landslide) or a catastrophic failure from any external cause, as a result of which:

(1) The Governor of a State has declared an emergency and the Secretary of Transportation has concurred; or

(2) The President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

*Emergency operations.* The net project cost of temporary service that is outside the scope of an affected recipient's normal operations, including but not limited to: evacuations; rescue operations; bus, ferry, or rail service to replace inoperable service or to detour around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

*Emergency protective measures.* (1) Projects undertaken immediately before, during or following the emergency or major disaster for the purpose of protecting public health and safety or for protecting property. Such projects:

(i) Eliminate or lessen immediate threats to public health or safety; or

(ii) Eliminate or lessen immediate threats of significant damage or additional damage to an affected recipient's property through measures that are cost effective.

(2) Examples of such projects include, but are not limited to:

(i) Moving rolling stock in order to protect it from damage, e.g., to higher ground in order to protect it from storm surges;

(ii) Emergency communications;

(iii) Security measures;

(iv) Sandbagging;

(v) Bracing/shoring damaged structures;

(vi) Debris removal;

(vii) Dewatering; and

(viii) Removal of health and safety hazards.

*Emergency repairs.* Capital projects undertaken following the emergency or major disaster, until such time as permanent repairs can be undertaken, for the purpose of:

(1) Minimizing the extent of the damage,

(2) Restoring service, or

(3) Ensuring service can continue to be provided until permanent repairs are made.

*External cause.* An outside force or phenomenon that is separate from the damaged element and not primarily the result of existing conditions.

*Heavy maintenance.* Work usually done by a recipient or subrecipient in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences, such as routine snow removal, debris removal from seasonal thunderstorms, or heavy repairs necessitated by excessive deferred maintenance. This may include work required as a direct result of a disaster, but which can reasonably be accommodated by a recipient or subrecipient's routine maintenance, emergency or contingency program.

*Incident period.* The time interval during which the emergency-causing incident occurs. FTA will not approve pre-award authority for projects unless the damage to be alleviated resulted from the emergency-causing incident during the incident period or was incurred in anticipation of that incident. For each Stafford Act incident, FTA will adopt the incident period established by FEMA.

*Major disaster.* Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122.

*Net project cost.* The part of a project that reasonably cannot be financed from revenues. 49 U.S.C. 5302.

*Permanent repairs.* Capital projects undertaken following the emergency or

major disaster for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure, as necessary to restore the elements to a state of good repair.

*Recipient.* An entity that operates public transportation service and receives FTA transit funds directly from FTA.

*Resilience.* The ability to anticipate, prepare for, and adapt to changing conditions and withstand, respond to, and recover rapidly from disruptions such as significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.

*Resilience project.* A project designed and built to address existing and future vulnerabilities to a public transportation facility or system due to a probable occurrence or recurrence of an emergency or major disaster in the geographic area in which the public transportation system is located, and which may include the consideration of projected changes in development patterns, demographics, or climate change and extreme weather patterns. A resilience project may be a stand-alone project or may be completed at the same time as permanent repairs.

*Serious damage.* Heavy, major or unusual damage to a public transportation facility which severely impairs the safety or usefulness of the facility. Serious damage must be beyond the scope of heavy maintenance.

*State.* A State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

*Subrecipient.* An entity that operates public transportation service and receives FTA funding through a recipient.

#### § 602.7 Policy.

(a) The Emergency Relief Program is intended to aid recipients and subrecipients in restoring public transportation service and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency or major disaster.

(b) Emergency relief funds are not intended to supplant other Federal funds for the correction of preexisting, non-disaster related deficiencies.

(c) Following an emergency, affected recipients may include projects that increase the resilience of affected public transportation systems to protect the systems from the effects of future emergencies and major disasters.

(d) The expenditure of emergency relief funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work completed after the emergency or major disaster.

(e) Emergency relief funds, or funds made available under 49 U.S.C. 5307 (Urbanized Area Formula Program) or 49 U.S.C. 5311 (Rural Area Formula Program) awarded for emergency relief purposes shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude FTA emergency relief fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds for repair or replacement of the public transit equipment or facility must be used upon receipt to reduce FTA's emergency relief fund participation in the project.

(1) If a recipient receives insurance proceeds that are directly attributable to specific assets, the recipient must:

(i) Apply those proceeds to the cost of replacing or repairing the damaged or destroyed project property; or

(ii) Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

(2) If under the terms of its policy a recipient receives insurance proceeds that are not attributable to specific assets, such as blanket, lump-sum, or unallocated proceeds, FTA, in consultation with the recipient, will determine the portion of such proceeds that the recipient must attribute to transit assets.

(3) Any insurance proceeds not attributable to transit assets may be used for other purposes without obligation to FTA, including as local share for FTA grants.

## § 602.9

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(f) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) provides that Federal agencies may not provide any financial assistance for the acquisition, construction, reconstruction, repair, or improvement of a building in a special flood hazard area (100-year flood zone) unless the recipient has first acquired flood insurance to cover the buildings and contents constructed or repaired with Federal funds, in an amount at least equal to the Federal investment (less land cost) or to the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is less.

(1) Transit facilities to which this paragraph (f) applies are buildings located in special flood hazard areas and include but are not limited to maintenance facilities, storage facilities, above-ground stations and terminals, and manufactured or modular office trailers.

(2) Flood insurance is not required for underground subway stations, track, tunnels, ferry docks, or to any transit facilities located outside of a special flood hazard area.

(g) Recipients must obtain and maintain flood insurance on those buildings and contents for which FTA has provided funds.

### § 602.9 Federal share.

(a) A grant, contract, or other agreement for emergency operations, emergency protective measures, emergency repairs, permanent repairs and resilience projects under 49 U.S.C. 5324 shall be for up to 80 percent of the net project cost.

(b) A grant made available under 49 U.S.C. 5307 or 49 U.S.C. 5311 to address an emergency shall be for up to 80 percent of the net project cost for capital projects, and up to 50 percent of the net project cost for operations projects.

(c) The FTA Administrator may waive, in whole or part, the non-Federal share required under paragraphs (a) and (b) of this section.

### § 602.11 Pre-award authority.

(a) Except as provided in paragraph (c) of this section, pre-award authority for the Emergency Relief Program shall be effective beginning on the first day of the incident period, subject to

the appropriation of Emergency Relief Program funds.

(b) Recipients may use section 5307 or section 5311 formula funds to address an emergency, and, except as provided in paragraph (c) of this section, pre-award authority shall be effective beginning on the first day of the incident period of the emergency or major disaster.

(c) For expected weather events, pre-award authority for evacuations and activities to protect public transportation vehicles, equipment and facilities, shall be effective in advance of the event under the following conditions:

(1) The Governor of a State declares a state of emergency and requests concurrence by the Secretary of Transportation or makes a request to the President for an emergency declaration, in advance or anticipation of the impact of an incident that threatens such damage as could result in a major disaster;

(2) The Governor takes appropriate action under State law and directs execution of the State emergency plan;

(3) The activities are required in anticipation of the event; and

(4) Assistance for a pre-disaster emergency declaration is limited to Emergency Protective Measures and Emergency Operations.

(d) Pre-award authority shall be subject to a maximum amount determined by FTA based on estimates of immediate financial need, preliminary damage assessments, available Emergency Relief funds and other criteria to be determined in response to a particular event.

(e) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project(s).

(f) Except as provided in § 602.15, all FTA statutory, procedural, and contractual requirements must be met.

(g) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional Administrator must make in order to approve a project.

(h) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(i) When FTA subsequently awards a grant for the project, the Financial Status Report in FTA's electronic grants management system must indicate the use of pre-award authority.

#### § 602.13 Eligible activities.

(a) An affected recipient may apply for emergency relief funds on behalf of itself as well as affected subrecipients.

(b) Eligible uses of Emergency Relief funds include:

- (1) Emergency operations;
- (2) Emergency protective measures;
- (3) Emergency repairs;
- (4) Permanent repairs;
- (5) Actual engineering and construction costs on approved projects;
- (6) Repair or replacement of spare parts that are the property of an affected recipient or subrecipient and held in the normal course of business that are damaged or destroyed; and
- (7) Resilience projects.

(c) Ineligible uses of Emergency Relief funds include:

- (1) Heavy maintenance;
- (2) Project costs for which the recipient has received funding from another Federal agency;
- (3) Project costs for which the recipient has received funding through payments from insurance policies;
- (4) Except for resilience projects that have been approved in advance, projects that change the function of the original infrastructure;
- (5) Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster;
- (6) Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster;
- (7) Project costs associated with the replacement or replenishment of damaged or lost material that are not the property of the affected recipient and not incorporated into a public transportation system such as stockpiled materials or items awaiting installation; and

(8) Other project costs FTA determines are not appropriate for the Emergency Relief Program.

#### § 602.15 Grant requirements.

(a) Funding available under the Emergency Relief program is subject to the terms and conditions FTA determines are necessary.

(b) The FTA Administrator shall determine the terms and conditions based on the circumstances of a specific emergency or major disaster for which funding is available under the Emergency Relief Program.

(1) In general, projects funded under the Emergency Relief Program shall be subject to the requirements of chapter 53 of title 49, United States Code, as well as cross-cutting requirements, including but not limited to those outlined in FTA's Master Agreement.

(2) The FTA Administrator may determine that certain requirements associated with public transportation programs are inapplicable as necessary and appropriate for emergency repairs, permanent repairs, emergency protective measures and emergency operating expenses that are incurred within 45 days of the emergency or major disaster, or longer as determined by FTA. If the FTA Administrator determines any requirement is inapplicable, the determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

(3) FTA shall publish a notice on its Web site and in the emergency relief docket established under 49 CFR part 601 regarding the grant requirements for a particular emergency or major disaster.

(c) In the event an affected recipient or subrecipient believes an FTA requirement limits its ability to respond to the emergency or major disaster, the recipient or subrecipient may request that the requirement be waived in accordance with the emergency relief docket process as outlined in 49 CFR part 601, subpart D. Applicants should not proceed on projects assuming that requests for such waivers will be granted.

(d) In accordance with Executive Order 11988, Floodplain Management, recipients shall not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent, as labeled in the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRMs). If there are no alternatives but to locate the action in a floodplain, prior to seeking FTA funding for such action, the recipient shall design or modify its actions in order to minimize potential harm to or within the floodplain.

(1) Except as otherwise provided in this subparagraph, recipients shall use the "best available information" as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations (ABFEs)), preliminary and final Flood Insurance Rate Maps, or Flood Insurance Studies (FISs).

(2) If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as "best available information" in accordance with Executive Order 11988.

(3) The final determination on "best available information" shall be used to establish such reconstruction requirements as a project's minimum elevation.

(4) Where higher minimum elevations are required by either State or locally adopted building codes or standards, the higher of the State or local minimums would apply.

(5) A base flood elevation from an interim or preliminary or non-FEMA source may not be used if it is lower than the current FIRM.

(6) Recipients shall also consider the best available data on sea-level rise, storm surge, scouring and erosion before rebuilding.

**§ 602.17 Application procedures.**

(a) As soon as practical after an emergency, major disaster or catastrophic failure, affected recipients shall make a preliminary field survey, working cooperatively with the appropriate FTA Regional Administrator and other governmental agencies with jurisdiction over affected public transportation systems. The preliminary

field survey should be coordinated with the Federal Emergency Management Agency, if applicable, to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible public transportation systems.

(1) The affected recipient shall prepare a damage assessment report. The purpose of the damage assessment report is to provide a factual basis for the FTA Regional Administrator's finding that serious damage to one or more public transportation systems has been caused by a natural disaster affecting a wide area, or a catastrophic failure. As appropriate, the damage assessment report should include by political subdivision or other generally recognized administrative or geographic boundaries—

(i) The specific location, type of facility or equipment, nature and extent of damage;

(ii) The most feasible and practical method of repair or replacement;

(iii) A preliminary estimate of cost of restoration, replacement, or reconstruction for damaged systems in each jurisdiction.

(iv) Potential environmental and historic impacts;

(v) Photographs showing the kinds and extent of damage and sketch maps detailing the damaged areas;

(vi) Recommended resilience projects to protect equipment and facilities from future emergencies or major disasters; and

(vii) An evaluation of reasonable alternatives, including change of location, addition of resilience/mitigation elements, and any other alternative the recipient considered, for any damaged transit facility that has been previously repaired or reconstructed as a result of an emergency or major disaster.

(2) Unless unusual circumstances prevail, the initial damage assessment report should be prepared within 60 days following the emergency, major disaster, or catastrophic failure. Affected recipients should update damage assessment reports as appropriate.

(3) For large disasters where extensive damage to public transportation systems is readily evident, the FTA Regional Administrator may approve

an application for assistance prior to submission of the damage assessment report. In these cases, the applicant shall prepare and submit to the FTA Regional Administrator an abbreviated or preliminary damage assessment report, summarizing eligible repair costs by jurisdiction, after the damage inspections have been completed.

(b) Before funds can be made available, a grant application for emergency relief funds must be made to, and approved by, the appropriate FTA Regional Administrator. The application shall include:

(1) A copy of the damage assessment report, as appropriate;

(2) A list of projects, as documented in the damage assessment report, identifying emergency operations, emergency protective measures, and emergency repairs completed as well as permanent repairs needed to repair, reconstruct or replace the seriously damaged or destroyed rolling stock, equipment, facilities, and infrastructure to a state of good repair; and

(3) Supporting documentation showing other sources of funding available, including insurance policies, agreements with other Federal agencies, and any other source of funds available to address the damage resulting from the emergency or major disaster.

(c) Applications for emergency operations must include the dates, hours, number of vehicles, and total fare revenues received for the emergency service. Only net project costs may be reimbursed.

(d) Applicants that receive funding from another Federal agency for operating expenses and also seek funding from FTA for operating expenses must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and the dates the other agency funded operating costs; and

(2) The scope of service and dates for which the applicant is seeking FTA funding.

(e) Applicants that receive funding from another Federal agency for emergency or permanent repairs or emergency protective measures and also seek funding from FTA for emergency

or permanent repairs or emergency protective measures must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement and the amount funded; and

(2) A list of projects included in the other agency's application or equivalent document.

(f) Applicants are responsible for preparing and submitting a grant application. The FTA regional office may provide technical assistance to the applicant in preparation of a program of projects. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent repairs the applicant will undertake. Project information should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility of proposed work. If the appropriate FTA Regional Administrator determines the damage assessment report is of sufficient detail to meet these criteria, additional project information need not be submitted.

(g) The appropriate FTA Regional Administrator's approval of the grant application constitutes a finding of eligibility under 49 U.S.C. 5324.

## PART 604—CHARTER SERVICE

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